IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3268 OF 2006

Mrs.Champabai K. Singh & Anr. ...Petitioners

V/s.

Vallabhdas Purushottam Pandya & Ors. ...Respondents

Shri Bipin Joshi for the Petitioners.

CORAM : V.M. KANADE, J.

DATED : MARCH 7, 2007

P.C. :-

1. Heard the learned Counsel for the petitioners.

2. The petitioners take exception to the order passed by the executing court on Obstructionist Notice which has been issued. The Court framed the following additional issues :-

1) Whether the plaintiff proves that late Kaluram Singh was the legal heir of original plaintiff late Ramji Dalip ?

2) Whether the plaintiff proves that late Kaluram Singh and the present plaintiffs have right, title and interest of Room No.25 ?

3. The learned Counsel for the petitioners submits that the executing court erred in framing additional issues. He submitted that the executing court would not have gone beyond the decree and frame these additional issues. He further submitted that there was no question of framing issues since in execution proceedings, the provisions of Order XIV was not applicable. He relied on the judgment of this court in the case of **C.V. Joshi vs. Elphinstone Spinning and Weaving Mills Co.Ltd. reported in 2001(2) Mh.L.J. page 195.**

4. It is not possible to accept the submission made by the learned Counsel for the petitioners. It is settled position in law that at the time of execution of the decree, if there is a obstruction raised by a person who is not a party to the suit, then such a party is entitled to raise any issue including issue of right, title and interest of either party as provided under Order XXI Rule 96 of the CPC and more particularly, the provisions of Order XXI Rule 96 to 101 is a selfcontained code regarding procedure to be followed while deciding the question of obstruction. In so far

as the first additional issue is concerned, that was already framed earlier. List of witnesses and list of documents were filed by the parties. The second issue which is framed is whether it is proved by the plaintiff that late Kaluram Singh and the present plaintiff have right, title and interest in property Room no.25. It is further settled position in law that this question can be raised in proceedings under Order XXI Rule 96 and not by way of a separate suit. It is no doubt true that issues need not be framed as a matter of rule and that the provisions of Order XIV would not be applicable, yet the executing court can for its own convenience frame these issues beyond the given appropriate findings on issues which are raised between the parties.

5. Under the circumstances, there is no reason to interfere with the order passed by the executing court.

6. Writ Petition is dismissed. The executing court, however, is directed to decide the Obstructionist Notice No.80/2004, as expeditiously as possible and in any case, within a period of six months.

. Writ petition is disposed of.

(V.M. Kanade, J.)